

Department of the Army, DoD

§516.6

DA in matters pertaining to labor relations, civilian personnel, and Federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, state workmen's compensation commissions. In the event any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

(n) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body. They will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption.

(o) Chief, Environmental Law Division, USALSA. The Chief, Environmental Law Division, attorneys assigned thereto, and other attorneys designated by the Chief, ELD, will maintain direct liaison with DOJ and represent DA in all environmental and natural resources civil litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, installations presently or previously managed by DA, and other sites or issues in which DA has a substantial interest, except as otherwise specifically provided in this part.

(p) Chief, Criminal Law Division, OTJAG. The Chief, Criminal Law Division, will have general oversight of felony and magistrate court prosecutions conducted by Army lawyers acting as Special Assistant U.S. Attorneys. (See subpart G of this part). The Chief will coordinate with DOJ and other governmental agencies concerning the overall conduct of these prosecutions.

[59 FR 38236, July 27, 1994; 59 FR 45974, Sept. 6, 1994]

§516.5 Restriction on contact with DOJ.

(a) General rule. Except as authorized by TJAG, the General Counsel, the Chief of Litigation Division, or this regulation, no Army personnel will confer or correspond with DOJ concerning legal proceedings in which the Army has an interest.

(b) Exceptions. This prohibition does not preclude contact with DOJ required by the Memorandum of Understanding between DOJ and DOD relating to the investigation and prosecution of certain crimes. (See AR 27-10, para 2-7). In addition, an installation SJA or legal adviser is expected to maintain a working relationship with the U.S. Attorney in each district within his geographical area. An SJA or legal adviser should request the U.S. Attorney to advise him immediately when litigation involving DA or its personnel is served on the U.S. Attorney.

[59 FR 38236, July 27, 1994; 59 FR 45974, Sept. 6, 1994]

§516.6 Appearance as counsel.

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, for example, deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27-3).

(4) The individual is a judge advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, for example, a Special Assistant U.S. Attorney, or an attorney assigned to Litigation Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of

§516.7

a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.

§516.7 Mailing addresses.

Mailing addresses for organizations referenced in this regulation are in appendix B to this part.

Subpart B—Service of Process

§516.8 General.

(a) Defined. Process is a legal document that compels a defendant in an action to appear in court or to comply with the court's demands, for example, in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, indictment, contempt order, subpoena, or summons. Service of process is the delivery of the document to a defendant to notify him of a claim or charge against him.

(b) Policy. DA personnel will follow the guidance of this chapter when civil officials attempt to serve civil or criminal process on individuals on Federal property.

(c) Procedures. Provost marshals shall ensure that installation law enforcement personnel are adequately trained to respond to situations which arise with regard to service of civil and criminal process. SJAs or legal advisers shall provide guidance to law enforcement personnel in these matters.

§516.9 Service of criminal process within the United States.

(a) Surrender of personnel. Guidance for surrender of military personnel to civilian law enforcement officials is in Chapter 7 of AR 630-10 and AR 190-9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special

32 CFR Ch. V (7-1-03 Edition)

rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) Requests for witnesses or evidence in criminal proceedings. See subpart G to this part.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

§516.10 Service of civil process within the United States.

(a) Policy. DA officials will not prevent or evade the service or process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) Request for witnesses or evidence in civil proceedings. See subpart G to this part.

(c) Process of Federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be permitted to serve Federal process. (See Fed. R. Civ. P. 4, 45).

(d) Process of state courts.

(1) In areas of exclusive Federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive Federal jurisdiction precludes service by state authorities on the military installation.

(2) On Federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state